

JEROME R. AIKEN (WSBA NO. 14647)

Meyer, Fluegge & Tenney, P.S.
230 S. Second Street / P.O. Box 22680
Yakima, WA 98907-2680
Phone: (509) 575-8500
Email: aiken@mftlaw.com

Honorable Salvador Mendoza, Jr.

Attorneys for Plaintiffs James Blais and Gail Blais

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAMES BLAIS and GAIL BLAIS, on)
behalf of themselves and all others)
similarly situated,)

Plaintiffs,

vs.

ROSS HUNTER, in his official)
capacity of Secretary of Washington)
State Department of Children, Youth)
and Families,)

Defendant.

NO. 20-CV-00187-SMJ

SECOND AMENDED CLASS

ACTION COMPLAINT FOR

DECLARATORY RELIEF AND

PRELIMINARY AND PERMANENT

INJUNCTION

James and Gail Blais, individually and on behalf of all others similarly
situated, bring the following action for declaratory relief and preliminary and
permanent injunction.

**Second Amended Class Action Complaint for
Declaratory Relief and Preliminary and
Permanent Injunction - 1**

LAW OFFICES OF
MEYER, FLUEGGE & TENNEY, P.S.
230 South Second Street · P.O. Box 22680
Yakima, WA 98907-2680
Telephone (509) 575-8500

I. INTRODUCTION

1. James and Gail Blais are residents of the state of Washington who wish to foster, and eventually adopt, their great-granddaughter, H.V., who has been removed from her mother's custody by the state of Idaho.

2. As part of the process to secure a foster parent license overseen by the Washington State Department of Children, Youth and Families, headed by Defendant Ross Hunter (collectively, the Department), the Department conducted a home study of the Blaises.

3. The Blaises proved qualified to be foster parents in every respect except one.

4. During the home study, the Blaises were asked how they would support a hypothetical foster child who might in the future develop or identify as lesbian, gay, bisexual, transgender, or questioning (LGBTQ+).

5. The Blaises responded that they would love and support the child, but – consistent with their sincerely held religious beliefs – they could not presently affirm that they would agree to call H.V. by a name other than her legal name, use pronouns that are inconsistent with H.V's birth sex, or support the child in undergoing counseling or medical procedures to transition to the opposite sex.

1 6. The Department repeatedly pressed the Blaises to get “educated” on
2 this issue, to change their views, and, after the Blaises still declined, the
3 Department denied their application, thereby barring them from providing any
4 foster care services ever, including for their own great-granddaughter.

5 7. The Blaises are not unique. The Department has denied applications
6 for foster care licenses to other well-qualified individuals on the basis that their
7 sincerely-held religious beliefs did not comport with the Department’s LGBTQ+
8 policies. The Department demanded that these individuals, like the Blaises, make
9 a blatantly unconstitutional choice: abandon their sincerely-held religious beliefs or
10 lose the opportunity to be considered as foster parents.

11 8. The Department’s actions are subject to strict scrutiny under federal
12 law, and because the Department has other ways to pursue its alleged interests
13 without completely barring the Blaises and other individuals from serving as foster
14 parents, the Department’s actions cannot survive that inquiry.

15 9. On behalf of themselves and others similarly situated, the Blaises thus
16 seek a declaratory judgment and injunctive relief confirming that Defendant
17 violated their rights under the Free Exercise and Free Speech Clauses of the First
18 Amendment and under the Substantive Due Process Clause of the Fourteenth
19 Amendment.

20 **Second Amended Class Action Complaint for
Declaratory Relief and Preliminary and
Permanent Injunction - 3**

LAW OFFICES OF
MEYER, FLUEGGE & TENNEY, P.S.
230 South Second Street • P.O. Box 22680
Yakima, WA 98907-2680
Telephone (509) 575-8500

10. This action arises under the provisions of the First and Fourteenth Amendments to the United States Constitution pursuant to 42 U.S.C. § 1983.

II. THE PARTIES

11. James Blais is a resident and domicile of the State of Washington. He is an observant and practicing member of the Seventh-day Adventist Church. He has been married to Gail Blais since 2013.

12. Gail Blais is a resident and domicile of the State of Washington. She is an observant and practicing member of the Seventh-day Adventist Church. Gail was previously married from 1968 to 2011, when her first husband died of cancer. She has two children from her first marriage. The Blaises have no biological children together.

13. Defendant Ross Hunter is Secretary of the Washington State Department of Children, Youth, and Families. The Department administers a foster licensing and placement program pursuant to Washington state law. As Secretary, Defendant Hunter is responsible for administering that program, as well as ensuring that the Department meets its obligations to license foster parents and provide for the care, protection and development of children in state custody. At all times material to this lawsuit, Defendant Hunter acted within the course and scope

1 of his duties as a public employee, was a state actor, and acted under color of state
2 law.

3 **III. JURISDICTION AND VENUE**

4 14. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§
5 1331, 1343, and 1367(a).

6 15. This Court has personal jurisdiction over Defendant.

7 16. Venue is proper in this judicial district pursuant to 28 U.S.C.
8 §1391(b).

9 **IV. GENERAL ALLEGATIONS**

10 **The Blaisses and their Religious Beliefs**

11 17. The Blaisses are observant members of the Seventh-day Adventist
12 faith.

13 18. The Seventh-day Adventist faith is a Protestant Christian faith that
14 places a strong emphasis on family life.

15 19. Within the family structure, parenting is recognized as both a
16 wonderful blessing and an incredible challenge. But Seventh-day Adventists
17 believe that these challenges provide an opportunity for growth and afford many
18 opportunities for parents and children to grow and develop into the image of God.
19

20. Seventh-day Adventists believe that parents are to bring up their children to love and obey the Lord. Parents “must gain a sympathetic understanding of their [children’s] problems, seek to provide for them a Christian social environment, and spiritually draw near them so [they] can impart the ideals, inspiration, and power of Christianity.” *Seventh-day Adventist Church Manual* (19th ed. 2015) at 152.¹

21. As followers of Jesus, the Church strives to treat all people with dignity and respect. The Bible commands followers of Christ to love everyone. Created in the image of God, they must be treated with dignity and respect. This includes people of all sexual orientations and gender identities. The bible commands “You shall love your neighbor as yourself” (Mark 12:31).

22. Seventh-day Adventists believe that Scripture provides principles for guidance and counsel to those who experience incongruity or uncertainty between their biological sex and gender identity. As with all facets of daily existence, Seventh-day Adventists seek guidance from God through Scripture to determine what is in their best interest and to live according to His will (2 Tim 3:16).

¹ The Seventh-day Adventist *Church Manual* is a Scripture-based guide that describes the operation and function of church organization and governance, and sets forth many standards of Christian living central to the Seventh-day Adventist faith.

1 23. Seventh-day Adventists believe that Scripture provides principles for
2 guidance and counsel to those who experience incongruity or uncertainty between
3 their biological sex and gender identity. As with all facets of daily existence,
4 Seventh-day Adventists seek guidance from God through Scripture to determine
5 what is in their best interest and to live according to His will (2 Tim 3:16).

6 **The Blaises' Desire to Become Licensed Foster Parents**

7 24. Gail Blais and her first husband had two children. Her son, in turn,
8 had five children. One of his daughters had two children, including a daughter,
9 H.V. Gail Blais is thus H.V.'s biological great-grandmother.

10 25. H.V. was born in September 2019 in Idaho.

11 26. Shortly after her birth, and while still in the hospital, H.V. was
12 removed from her biological parents and placed in foster care in Idaho based on
13 concerns for her welfare.

14 27. In December 2019, the Idaho Department of Health and Welfare—
15 which oversees the Idaho foster and adoptive care program—contacted the Blaises
16 about H.V. and, in response, the Blaises expressed an interest in fostering and
17 potentially adopting H.V.

The Department's Licensing Requirements for Foster Homes

28. In Washington the licensing requirements for foster homes are governed by Chapter 110-148 of the Washington Administrative Code. These requirements are "designed to ensure children who are in foster care are safe, healthy and protected from all forms of child abuse and neglect." WAC 110-148-1300.

29. An applicant must (i) be at least 21 years of age; (ii) have sufficient income to support the applicant without relying on foster care payments; (iii) complete training in First Aid/CPR, HIV/AIDs, and blood borne pathogens; (iv) submit a negative tuberculosis test dated within the last year; and (v) have current pertussis and influenza immunizations. WAC 110-148-1320; 110-148-1365; 110-148-1375.

30. In addition, the applicant and all adult household members must pass a background clearance check with the FBI and Washington State Patrol. WAC 110-148-1320.

31. Before granting a foster license, the Department also assesses both the applicant's "ability to provide a safe home and to provide the quality of care needed by children placed in the home," as well as whether the applicant meets the Department's training requirements. WAC 110-148-1320.

1 32. An applicant is required to demonstrate “[t]he understanding, ability,
2 physical health, emotional stability, and personality suited to meet the physical,
3 mental, emotional, cultural and social needs of children under their care,” that they
4 have “functional literacy,” are “able to communicate with the child, the
5 department, health care providers, and other service providers,” and “may not use
6 drugs or alcohol . . . in a manner that affects [the applicant’s] ability to provide safe
7 care to children” WAC 110-148-1365.

8 33. Of utmost importance, applicants “must demonstrate they have the
9 ability to furnish children with a nurturing, respectful, and supportive
10 environment.” WAC 110-148-1365.

11 34. There is nothing under Washington law that authorizes the
12 Department to impose any additional licensing requirements not set forth in the
13 applicable regulations.

14 35. There is nothing under Washington law that imposes as a separate
15 licensing requirement that prospective applicants must consider and definitively
16 determine how they will care for a hypothetical child at some point in the distant
17 future.

Licensed Foster Parents' Duty Towards Children In Their Care

36. After a home has been licensed, the Department then identifies the “maximum number, age range, and gender of the children that may be placed” in the foster home, based on the foster parent’s “skills, the number of care providers, the physical accommodations of [the] home and the needs of the children placed in [the] home.” WAC 110-148-1385.

37. For children placed by the Department, foster parents must “make all reasonable efforts to ensure that children are not abused or neglected.” WAC 110-148-1520. Foster parents “must provide and arrange for care that is appropriate for the child's age and development including: (a) Emotional support; (b) Nurturing and affection; (c) Structured daily routines and living experiences; and (d) Activities that promote the development of each child. This includes cultural and educational activities in your home and the community.” WAC 110-148-1520.

38. With regard to infants and young children, the Department specifies that foster parents “must: (a) Hold infants, under the age of six months, for all bottle feedings; (b) Hold infants at other times for the purposes of comfort and attention; and (c) Allow children plenty of free time outside of a swing, crib or playpen.” WAC 110-148-1520(3).

1 39. The Department also specifies that foster parents “must follow all
2 state and federal laws regarding nondiscrimination while providing services to
3 children in your care. You must treat foster children in your care with dignity and
4 respect regardless of race, ethnicity, culture, sexual orientation and gender identity.”
5 WAC 110-148-1520(6).

6 40. Foster parents similarly “must connect a child with resources that
7 meets a child’s needs regarding race, religion, culture, sexual orientation and gender
8 identity. These include cultural, educational and spiritual activities in your home
9 and community including tribal activities within the child's tribal community or
10 extended tribal family.” WAC 110-148-1520(7). The child’s social worker or case
11 manager is tasked to assist “with identifying these resources.” *Id.*

12 41. Licensed foster parents also “must ensure that children receive
13 appropriate medical and dental care.” WAC 110-148-1550.

14 **The Department’s Policy to Support LGBTQ+**
15 **Children and Youth**

16 42. In July 2018, the Department enacted Policy 6900, entitled
17 “Supporting LGBTQ+ Identified Children and Youth.”

18 43. The Policy explicitly “applies to [Department] staff,” and does not
19 address the extent or manner in which it applies to foster families.

1 44. The Policy's stated purpose is "[t]o address the specific needs of
2 children and youth under the age of 21 receiving Children's Administration (CA)
3 services who are developing, discovering, or identifying themselves as lesbian,
4 gay, bisexual, transgender and questioning (LGBTQ+)" and to "provide guidance
5 to assist CA staff in identifying and referring LGBTQ+ children and youth to
6 appropriate and culturally responsive services."

7 45. Under the Policy, a caseworker must "[c]onsider the child or youth's
8 LGBTQ+ identity as a factor when making placement decisions," including
9 "[d]etermining, on a case-by-case basis, which placement option would be in the
10 child or youth's best interest for their safety and well-being." (Emphasis added.)

11 46. The Policy also mandates that a caseworker "[s]upport any youth
12 identifying as transgender and seeking gender affirming medical services. This
13 includes, but is not limited to: Following the advice of the medical and therapeutic
14 professionals working with the youth. Standard medical protocols must be
15 followed."

16 47. The Policy further authorizes a caseworker to "[o]btain[] a court
17 order or parent or legal guardian consent before providing consent for a youth to
18 undergo gender affirming related medical care" such as "Hormone blockers,"
19

1 “Hormone Replacement Therapy (HRT),” or “Behavior Health Services (Gender
2 Dysphoria).”

3 48. There is nothing in Policy 6900 that applies to the Department’s foster
4 parent licensing requirements or that authorizes the Department to impose any of
5 the Policy’s caseworker mandates on prospective foster parents.

6 49. There is nothing in Policy 6900 that imposes any separate foster
7 parent licensing requirement with which applicants must comply.

8 50. There is nothing in Policy 6900 that applies to children who are not
9 within the Department’s custody and care, and nothing that applies to hypothetical
10 children who may be in the Department’s custody and care sometime in the future
11 from the date of the prospective foster parents’ application.

12 **Foster Care in Washington**

13 51. As of June 2018, Washington had approximately 9,200 children and
14 youth in out-of-home placements, with only about 5,110 available foster homes.

15 52. Thus, a growing number of children are removed from their families
16 only to enter a foster care system that cannot even place them in a home. Hundreds
17 of these children spend countless nights in hotels, while others are sent out of state
18 to group facilities with questionable practices.

1 53. In short, Washington has a foster care crisis caused by too many
2 children in need of the State's care and protection and not enough qualified
3 licensed foster homes in which to place them.

4 **The Department's Family Home Study Guide**

5 54. In January 2020, the same month the Blaisses applied for a license, the
6 Department revised its "Family Home Study Guide" and its related "Family Home
7 Study Questions and Prompts," which identifies questions Foster Care Licensors
8 can ask families in conducting a home study.

9 55. Although the Department enacted Policy 6900 in 2018, the earlier
10 versions of these guidance documents did not contain questions about foster
11 children who identify, or may at some time in the future identify, as LGBTQ+.

12 56. The guide does not suggest how a foster-care applicant must respond
13 to these questions to qualify for the license.

14 57. The document specifically states that its purpose is only "to provide
15 workers with a framework for interviews. The purpose of this guide is to provide
16 workers with a framework for interviews. This guide is not intended to be the only
17 source of questions or topics during the process, as the worker's responsibility is to
18 complete a holistic assessment to ensure that foster family homes are safe and
19 suitable for foster children."

The Blaises' Home Study

58. In early January 2020, around the same time that the new "Family Home Study Questions & Prompts" issued, the Blaises heard from Patrick Sager, the Foster Home Licensor assigned to conduct their home study.

59. After the Blaises confirmed their interest in becoming foster parents, Mr. Sager provided them with information about the Washington foster-parent license process and that same month sent a link where they could take online Caregiver Core Training and secure a certificate of completion.

60. The Blaises were also contacted by Amber Moody, a Recruiter Peer Mentor, who works with the Department in Eastern Washington to provide support to relative/foster/ adoptive families in Stevens County.

61. Amber Moody provided the Blaises with additional information about the Caregiver Core Training program, certification classes for CPR training, and foster parent orientation sessions in their area.

62. In mid-January 2020, Mr. Sager interviewed the Blaises and performed an inspection of their home.

63. At the time of the interview, Gail Blais had begun the training mandated by the Department to become a licensed foster parent. The interview

1 with Gail lasted approximately 90 minutes and the interview with James took
2 roughly one hour.

3 64. At the time of the interview, H.V. was four months old.

4 65. During Mr. Sager's interviews of Gail and James:

5 a. Mr. Sager was aware that both Gail and James are observant
6 members of the Seventh-day Adventist faith.

7 b. Mr. Sager asked a number of appropriate questions dealing
8 directly with the Washington foster parent licensing requirements focusing
9 on such things as the Blaises' family history, the manner in which Gail and
10 James had raised their children, communication issues, dietary
11 considerations, and the use of corporal punishment.

12 c. In addition to these questions, Mr. Sager also extensively
13 questioned both Gail and James with regard to hypothetical issues related to
14 H.V.'s possible future sexual orientation and gender identity.

15 66. These questions included such things as:

16 a. How would the Blaises react if H.V. was a lesbian?

17 b. Would the Blaises allow H.V. to have a girl spend the
18 night at their home as H.V.'s romantic partner?

1 c. If at 15 years old, H.V. wanted to undergo hormone
2 therapy to change her sexual appearance, would the Blaises support
3 that decision and transport her for those treatments?

4 d. If, as a teenager, H.V. wanted to dress like a boy and be
5 called by a boy's name, would the Blaises accept her decision and
6 allow her to act in that manner?

7 67. Gail and James were both surprised and taken aback by these
8 questions. Given that H.V. was only 4 months old, they had a difficult time
9 imagining how they would respond to circumstances that may or may not occur 15
10 years into the future. Nonetheless, both Gail and James cooperated with the
11 interview and responded to all of the questions openly, honestly, and in a manner
12 consistent with their religious beliefs.

13 68. Gail and James made clear to Mr. Sager that, as Seventh-day
14 Adventists, they believe it is important and part of their Christian obligation to love
15 and support all. This duty especially applies to youth who may feel isolated or
16 uncomfortable because of who they are, including those who are realizing their
17 sexual orientation or identity. The Blaises made clear that they would provide a
18 supporting and loving home for any child placed under their care—particularly
19 their own great-granddaughter—regardless of how that child might identify.

1 69. With regard to the specific hypothetical questions relating to possible
2 hormone therapy, the Blaises responded that although they could not support such
3 treatments based on their sincerely-held religious convictions, they absolutely
4 would be loving and supportive of H.V.

5 70. The Blaises also indicated that, in the unlikely event H.V. may
6 develop gender dysphoria (or any other medical condition) as a teenager or young
7 adult, they would provide her with loving, medically and therapeutically
8 appropriate care that is consistent with both then-current medical principles and
9 their beliefs as Seventh-day Adventists and Christians.

10 71. At the conclusion of the interview, Mr. Sager indicated that, most
11 likely, the Department would not approve the Blaises' application to become foster
12 parents. According to Mr. Sager, the Blaises' responses to questions about H.V.'s
13 future gender identity were inconsistent with the Department's policy to support
14 LGBTQ+ children and youth.

15 72. In early February 2020, Mr. Sager emailed James Blais and stated that
16 he had been "tasked with ensuring you are provided relevant information and
17 research regarding LGBTQ+ youth in foster care." Mr. Sager asked James to
18 review these materials so that he might "make a more informed decision about
19

1 supporting LGBTQ+ youth in foster care.” In response, James promised they
2 would review the materials within the coming week.

3 73. In mid-February, after having read those materials, James and Gail
4 responded to Mr. Sager. They reiterated their sincerely-held religious belief in
5 loving all persons regardless of their sexual orientation or identity. They repeated
6 their commitment to provide a loving and supportive home for any foster child in
7 their care. And they again expressed their conviction—based on their faith—that
8 they could not support hormone treatment for transition purposes. They also stated
9 that they did not think that their religious beliefs were incompatible with providing
10 care for gender dysphoria or any other issue, and committed to providing H.V. the
11 best care and most loving home that they can.

12 74. The Blaises repeated that they would love nothing more than to
13 welcome H.V. into their home and raise her as their own child, with the same
14 unconditional love they showed to their other children. They asked the Department
15 to approve their application to become foster parents, and offered to meet again in
16 order to further explain their position and beliefs.

17 75. Mr. Sager emailed James and thanked him for his honesty. He also
18 informed James “that this is being staffed with additional parties” and that “this
19 will be discussed further.”

1 76. During this same time period (January and February 2020), Gail and
2 James were in contact with the Idaho Department of Health and Welfare about a
3 possible visit with H.V. They finally were able to travel to Idaho and meet with
4 H.V. in late February.

5 77. Soon after Gail and James returned from visiting H.V. in Idaho, Mr.
6 Sager called them. During this telephone call, Mr. Sager asked additional questions
7 concerning H.V.'s possible future sexual orientation and gender identity. These
8 questions included

9 a. If H.V. had a lesbian girlfriend, would the Blaises be willing to
10 have her visit their home and possibly travel with them?

11 b. Would the Blaises find it acceptable if H.V. dressed like a boy?

12 c. Would the Blaises find it acceptable if H.V. wanted to be called
13 by a boy's name?

14 d. If at age 14, a doctor ordered H.V. to undergo hormone therapy
15 to change her sexual appearance, would the Blaises comply with that order?

16 e. If at age 14, H.V. said that if the Blaises did not agree with her
17 having hormone therapy she would leave their home and run away, how
18 would they respond?

1 78. Mr. Sager did not ask any questions about any other topics or issues
2 during this follow-up interview session. ‘

3 79. At the time of this telephone interview, H.V. was five months old.

4 80. At the conclusion of the interview, Mr. Sager told the Blaises that they
5 should drop their request to become licensed foster parents because their religious
6 views about handling H.V.’s possible future gender identity issues were
7 inconsistent with the Department’s policy.

8 81. Mr. Sager further told the Blaises that if they did not withdraw their
9 application, then their responses would be noted in the Department’s records and
10 would negatively impact their ability to be licensed foster parents in Washington in
11 the future.

12 82. The Blaises refused to change their responses and refused to withdraw
13 their foster parent application. Mr. Sager indicated that the Department would send
14 its denial letter shortly. When the Blaises pressed him for a more definite time
15 frame, Mr. Sager said the letter would take about two weeks.

16 83. Mr. Sager did not get back to the Blaises as promised, and the
17 Department did not send any letter within the anticipated timeframe. In response to
18 an inquiry from James sent one week later, Mr. Sager texted that he did not “have
19 an answer yet. I am waiting to hear back from someone.”

1 84. Two weeks later—in mid-March—Mr. Sager again texted James, this
2 time asking whether James “could meet me and a coworker” the following week.

3 85. In an email sent several days later, Mr. Sager explained to James that
4 he “wanted to meet with you and my co-worker. . . . She is a foster care licenser in
5 Spokane. She also is our LGBTQ+ lead. I was hoping we all could meet together
6 as she may have additional resources regarding LGBTQ+ that may be of benefit.
7 We felt as a department we wanted to provide another opportunity to hopefully
8 come to a resolution regarding the [Interstate Compact on the Placement of
9 Children] request for H.V.”

10 86. The Blaises agreed to meet with Department representatives and be
11 questioned for a third time. Once again, the sole focus of the interview questions
12 posed by the representatives of the Department was on the manner in which the
13 Blaises would respond to H.V.’s possible future sexual orientation and gender
14 identity when she was a teenager.

15 87. At the time of this third interview, H.V. was six months old.

16 88. As they had done during the first two interviews with the Department,
17 both Gail and James cooperated fully during the third interview session, and again
18 responded to all of the questions openly, honestly, and in a manner consistent with
19 their religious beliefs.

1 89. At the end of this third interview, Mr. Sager's co-worker told the
2 Blaises that they were at "an impasse" as how to proceed with the foster parent
3 license application.

4 90. Several days later, after hearing nothing from the Department, James
5 contacted Mr. Sager and asked whether the Department "will be able to license us
6 for foster care? Please send me your decision in writing ASAP."

7 91. On March 30, 2020, Mr. Sager emailed James saying only "I don't
8 have an answer at this time. We are in discussion with others about how to proceed
9 and I will get an answer to you as soon as we have information to provide."

10 92. On April 5, 2020, Mr. Sager again emailed James and again said that
11 the Department still had not made a decision. According to Mr. Sager, "Licensing
12 division is still discussing with the appropriate chain of command about how to
13 proceed, and will have an answer as soon as possible."

14 93. Once again, Mr. Sager stated that he had "been asked to provide you
15 both with a training opportunity that pertains to what we have discussed
16 previously," and provided a link that training. That training consisted of a two-hour
17 course that focused on such topics as "Myths and stereotypes about LGBTQ+
18 children/youth" and "how to promote the health, safety and well-being of the
19 children/youth in care."

1 94. The Blaises have completed a portion of their training to become
2 licensed foster parents. After their first interview with Mr. Sager in January 2020,
3 Mr. Sager advised the Blaises not to engage in any preparation that would cost
4 them any money.

5 95. Mr. Sager told the Blaises that, but for their answers to questions
6 about H.V.'s hypothetical sexual orientation and gender identity, they were
7 acceptable applicants to become licensed foster parents.

8 **The Denial of the Blaises' Application**

9 96. After filing of this lawsuit and nearly three and a half months later, on
10 June 16, 2020, the Department sent the Blaises a letter denying their application to
11 become foster parents.

12 97. The letter acknowledged that there were "many situations" where the
13 Blaises would be able to support a foster child who identified as LGBTQ+, but not
14 if supporting services "were not consistent with their religious beliefs."

15 98. For example, the letter notes that the Blaises "would support a foster
16 child and allow the child's partner in their home and on trips."

17 99. The Blaises also stated that "[w]hile we are not willing to commit to
18 hormone treatment far into the future for an infant, in the very unlikely event that
19 baby [H.V.] develops gender dysphoria in the future (or any other medical

1 condition) we will provide her with loving, medically and therapeutically
2 appropriate care that is consistent *with sound science* and our beliefs as Seventh-
3 day Adventists and Christians.” (Emphasis added).

4 100. However, the Blaises also expressed that, consistent with their
5 sincerely held religious beliefs – they could not presently affirm that they would
6 agree to call H.V. by a name other than her legal name, use pronouns that are
7 inconsistent with H.V.’s birth sex, or support the child in undergoing counseling or
8 medical procedures to transition to the opposite sex.

9 101. Concluding that “services that are consistent with [the Blaises]
10 religious beliefs” would “not meet the Department’s minimum licensing
11 requirements,” the Department denied the Blaises’ application.

12 102. The Department has never identified what standard the Blaises’ would
13 be required to meet in affirming what they would do in any given future situation
14 before they can know the precise needs of the child or the prevailing relevant
15 medical advice. The standard instead is flexible, and according to the
16 Department’s “Family Home Study Questions and Prompts,” “[c]oncerns about
17 applicants do not automatically result in a denial of a foster care license, or even
18 require additional training.”
19
20

1 103. In the meantime, while the Department has delayed and ultimately
2 denied the Blaises' application over these uncertainties, the Idaho Department of
3 Health and Welfare has placed H.V. in foster care with non-relative foster parents
4 in Idaho and is moving forward to terminate the parental rights of H.V.'s biological
5 parents.

6 104. Separate and apart from whether the Blaises are able to serve as foster
7 parents for H.V., they are committed to becoming licensed foster parents in
8 Washington.

9 105. They have an honest and unwavering desire to help children in need
10 and truly want the opportunity to provide a safe, stable and caring home for
11 children.

12 106. Jim and Gail Blais are willing to serve as foster parents for children
13 and to love and encourage them regardless of their race, sex, religion, national
14 origin, ancestry, age, disability, familial status, sexual orientation, or gender
15 identity.

16 V. CLASS ALLEGATIONS

17 107. This action properly is maintainable as a class action pursuant to
18 Federal Rule of Civil Procedure 23(b)(2).

19 108. **Class Definition:** The Rule 23(b)(2) class is defined as follows:

20 **Second Amended Class Action Complaint for
Declaratory Relief and Preliminary and
Permanent Injunction - 26**

LAW OFFICES OF
MEYER, FLUEGGE & TENNEY, P.S.
230 South Second Street · P.O. Box 22680
Yakima, WA 98907-2680
Telephone (509) 575-8500

1 All individuals who applied for a foster care license with the
2 Washington Department of Children, Youth and Families at any time
3 after July 2018 and who were denied a foster care license on the basis
4 of their sincerely-held religious beliefs.

5 109. The following people are excluded from the Class: (1) any Judge or
6 Magistrate presiding over this action and members of their families; (2) persons
7 whose claims in this matter have been finally adjudicated on the merits or
8 otherwise released; (3) Plaintiffs' counsel and Defendant's counsel; and (4) the
9 legal representatives, successors, and assigns of any such excluded persons.

10 110. The proposed class definition is precise, objective and presently
11 ascertainable, and it is administratively feasible for the Court easily to ascertain
12 whether a particular individual is a member of the class.

13 111. **Numerosity:** On information and belief, the members of the class are
14 so numerous that joinder of all members of the class is impracticable. Members of
15 the Class can be identified through Defendant's records and discovery.

16 112. **Commonality:** Certification of the class is desirable and proper
17 because there are questions of law and fact common to all members of class. Such
18 common questions for the Class include, but are not necessarily limited to, the
19 following:

1 a. Whether the Department's interpretation and enforcement of its
2 LGBTQ+ policies places an undue burden on religious adherents;

3 b. Whether Department officials have unfettered discretion that is
4 not tied to particularized, objective criteria in assessing foster care license
5 applications;

6 c. Whether the Department applies foster child placement policies
7 to decisions relating to foster care license applications;

8 d. Whether the Department accommodates sincerely-held
9 religious beliefs in its decisions regarding foster care license applications;

10 e. Whether the Department could satisfy its goal of protecting
11 LGBTQ+ youth in other ways less restrictive to religion;

12 113. **Typicality:** Certification of the class is desirable and proper because
13 Plaintiffs' claims are typical of the claims of other members of the Class that
14 Plaintiffs seek to represent.

15 114. **Adequate Representation:** Certification of the class is desirable and
16 proper because Plaintiffs will fairly and adequately protect the interests of the
17 Class they seek to represent. There are no conflicts of interest between Plaintiffs'
18 claims and those of other members of the Class, and Defendant has no defenses
19 unique to Plaintiffs. Plaintiffs are cognizant of their duties and responsibilities to

1 the Class. Plaintiffs' attorneys are qualified, experienced and able to conduct the
2 proposed class action litigation.

3 115. This action should proceed as a class action under Fed. R. Civ. P.
4 23(b)(2) because Defendant has acted or refused to act on grounds generally
5 applicable to the Class, so that final injunctive relief or corresponding declaratory
6 relief is appropriate respecting the class as a whole.

7 116. **Policies Generally Applicable to the Class:** Certification of the
8 Class is desirable and proper because Defendant has acted or refused to act on
9 grounds generally applicable to the Class as a whole, thereby requiring the Court's
10 imposition of uniform relief to ensure compatible standards of conduct toward the
11 members of the Class and making final injunctive relief appropriate with respect to
12 the Class as a whole. Defendant's policies that Plaintiffs challenge apply and
13 affect members of the Class uniformly, and Plaintiffs' challenge of these policies
14 hinges on Defendant's conduct with respect to the Class as a whole, not on facts or
15 law applicable only to Plaintiffs.

16 117. **Superiority:** Certification of the class is desirable and proper because
17 class proceedings are superior to all other available methods for the fair and
18 efficient adjudication of this controversy. Individual litigation would increase the
19 delay and expense to all parties and the Court and would require duplicative

1 consideration of the common legal and factual issues presented. By contrast, a
2 class action presents far fewer management difficulties and provides the benefits of
3 single adjudication, economy of scale, and comprehensive supervision by a single
4 Court. Economies of time, effort, and expense will be fostered and uniformity of
5 decisions will be ensured.

6 **COUNT I**
7 **42 U.S.C. § 1983**
8 **VIOLATION OF THE FIRST AMENDMENT**
9 **TO THE U.S. CONSTITUTION**
10 **FREE EXERCISE CLAUSE —INDIVIDUALIZED ASSESSMENT**

11 118. Plaintiffs reallege and incorporate by reference all the foregoing
12 paragraphs and all subparagraphs as if they were fully set forth herein.

13 119. The Department's denial of the Blaises' application for a foster
14 license places a substantial burden on their religious exercise by forcing them to
15 choose between the opportunity to be considered as foster parents, and potentially
16 adoptive parents, for their great-granddaughter and maintaining their religious
17 beliefs.

18 120. The Department's denial of the Class members' applications for a
19 foster license places a substantial burden on their religious exercise by forcing
20 them to choose between the opportunity to be considered as foster parents and
maintaining their religious beliefs.

1 121. The Department's denial of the Blaises' and Class members'
2 applications also imposes a substantial burden on their religious exercise by
3 forcing them to choose between the opportunity to be considered as foster parents
4 for other children in need and maintaining their religious beliefs.

5 122. The Department's ultimate decision to deny the Blaises' and Class
6 members' applications was based on an individualized assessment of their
7 religious beliefs and their responses to the Department's questions.

8 123. When a law or policy gives the government discretion to make case-
9 by-case decisions based on the unique circumstances of a particular situation, strict
10 scrutiny is required.

11 124. The Department lacks a compelling governmental interest in requiring
12 the Blaises or other foster-care applicants proactively to affirm how they will
13 respond to a hypothetical situation that may or may not happen sometime in the
14 future.

15 125. To the extent the Department has a compelling governmental interest,
16 there are other ways it could meet that interest that are less restrictive to religion.

17 126. Absent declaratory and injunctive relief, the Blaises and Class members
18 have been, and will continue to be, irreparably harmed by the Department's
19 actions.

COUNT II
42 U.S.C. § 1983
VIOLATION OF THE FIRST AMENDMENT
TO THE U.S. CONSTITUTION
FREE EXERCISE CLAUSE —IMPOSING SPECIALIZED
DISABILITIES ON THE BASIS OF RELIGIOUS BELIEF

127. Plaintiffs reallege and incorporate by reference all the foregoing paragraphs and all subparagraphs as if they were fully set forth herein.

128. The Blaises and Class members are qualified to be licensed as foster parents and were denied a license only because they stated they would support a hypothetical foster child who might identify as LGBTQ+ consistent with their religious beliefs.

129. The Department denied the Blaises' and Class members' applications because providing services that are consistent with their religious beliefs would "not meet the Department's minimum licensing requirements.

130. Barring the Blaises and Class members, based on their religious beliefs, from providing any foster care services, even for their own great-granddaughter, violates their constitutional rights.

131. The First Amendment excludes all governmental punishment of religious beliefs as such.

1 132. The government cannot punish the expression of religious beliefs that
2 it considers false or impose special disabilities on the basis of religious views or
3 religious status.

4 133. Such governmental punishment of religious beliefs is never
5 permissible.

6 134. The Department's denial of the Blaises' and Class members' foster
7 care license based on their religious beliefs was per se unconstitutional under the
8 Free Exercise Clause.

9 135. Absent declaratory and injunctive relief, the Blaises and Class
10 members have been, and will continue to be, irreparably harmed by the
11 Department's actions.

12 **COUNT III**
13 **42 U.S.C. § 1983**
14 **VIOLATION OF THE FIRST AMENDMENT**
15 **TO THE U.S. CONSTITUTION**
16 **FREE EXERCISE CLAUSE —NOT NEUTRAL**

17 136. Plaintiffs reallege and incorporate by reference all the foregoing
18 paragraphs and all subparagraphs as if they were fully set forth herein.

19 137. Government action is not "neutral" if it "restrict[s] practices because
20 of their religious motivation." *Church of the Lukumi Babalu Aye, Inc. v. City of*
Hialeah, 508 U.S. 520, 533 (1993).

1 138. “Facial neutrality is not determinative.” *Lukumi*, 508 U.S. at 534.
2 Rather the Free Exercise Clause also forbids “covert suppression” of religion and
3 “subtle departures from neutrality.” *Id.*

4 139. On information and belief, the Department’s policy here was
5 motivated traditional religious beliefs about sexuality and gender identity.

6 140. The Department excludes potential foster parents who will not
7 “affirm” LGBTQ+ children in specific ways, even if such acquiescence violates
8 the foster parents’ own sincerely-held religious beliefs.

9 141. The denial of the Blaises’ and Class members’ applications for a
10 foster license places via non-neutral proceedings imposed a substantial burden on
11 their religious exercise by forcing them to choose between the opportunity to be
12 considered as foster parents and maintaining their religious beliefs.

13 142. The policy imposed a substantial burden on the Blaises’ and Class
14 members’ religious exercise by forcing them to choose between the opportunity to
15 be considered as foster parents and maintaining their religious beliefs.

16 143. The Blaises and Class members are entitled to be evaluated as foster
17 parents via a process that is not biased against their religious beliefs.

18 144. At minimum, a government policy that is not neutral triggers strict
19 scrutiny.

1 145. The Department lacks a compelling governmental interest in requiring
2 the Blaises or other foster-care applicants to proactively affirm how they will
3 respond to a hypothetical situation that may or may not happen sometime in the
4 future.

5 146. To the extent the Department has a compelling governmental interest,
6 there are other ways it could meet that interest that are less restrictive to religion.

7 147. Absent declaratory and injunctive relief, the Blaises and Class
8 members have been, and will continue to be, irreparably harmed by the
9 Department's actions.

10 **COUNT IV**
11 **42 U.S.C. § 1983**
12 **VIOLATION OF THE FIRST AMENDMENT**
 TO THE U.S. CONSTITUTION
 FREE SPEECH—COMPELLED SPEECH

13 148. Plaintiffs reallege and incorporate by reference all the foregoing
14 paragraphs and all subparagraphs as if they were fully set forth herein.

15 149. The Government cannot compel a party "to be an instrument for
16 fostering public adherence to an ideological point of view." *Wooley v. Maynard*,
17 430 U.S. 705, 715 (1977).

18 150. Government regulations that "target speech based on its
19 communicative content . . . are presumptively unconstitutional and may be justified

1 only if the government proves that they are narrowly tailored to serve compelling
2 state interests.

3 151. “[F]reedom of speech includes both the right to speak freely and the
4 right to refrain from speaking at all. . . . Compelling individuals to mouth support
5 for views they find objectionable violates [a] cardinal constitutional command”
6 and should be “universally condemned.” *Janus*, 138 S. Ct. 2448, 2463 (2018).
7 Indeed,

8 152. The Blaises’ great-granddaughter is an infant and, like most children
9 in foster care, may never identify as LGBTQ+.

10 153. Requiring foster parents to affirm as an ideological matter the state’s
11 views on sexual orientation and gender identity, regardless of whether those views
12 will ever be implicated in providing foster care is a requirement of speech, not
13 conduct.

14 154. By requiring the Blaises and Class members, as a condition for getting
15 a license, to affirm what they would do in a hypothetical situation that might never
16 arise, the state is compelling speech to foster adherence to the government’s
17 preferred point of view.

157. Absent declaratory and injunctive relief, the Blaisses and Class members have been, and will continue to be, irreparably harmed by the Department's actions.

158. Plaintiffs reallege and incorporate by reference all the foregoing paragraphs and all subparagraphs as if they were fully set forth herein.

**Second Amended Class Action Complaint for
Declaratory Relief and Preliminary and
Permanent Injunction - 37**

1 160. Such privileges include the right to maintain family relationships
2 without undue interference by the government.

3 161. These rights and privileges extend beyond immediate family members
4 to protect the right of extended family members to maintain familial relationships
5 without undue government interference.

6 162. At minimum, substantive due process supports the Blaises' right to be
7 considered as foster parents for their great-granddaughter without undue
8 government interference.

9 163. The state's policy bars the Blaises from being considered as foster
10 parents to their great-granddaughter unless they agree affirm the state's approach
11 to LGBTQ+ children, even though their great-granddaughter is still an infant, may
12 never identify as LGBTQ+, or could be adopted before such concerns arise.

13 164. The policy thus unduly interferes with the Blaises' substantive due
14 process right as family to be considered as foster parents for their great-
15 granddaughter.

16 165. Absent declaratory and injunctive relief, the Blaises have been, and
17 will continue to be, irreparably harmed by the Department's actions.

COUNT VI
42 U.S.C. § 1983
VIOLATION OF THE FIRST AMENDMENT
TO THE U.S. CONSTITUTION
FREE EXERCISE—HYBRID RIGHTS

166. Plaintiffs reallege and incorporate by reference all the foregoing paragraphs and all subparagraphs as if they were fully set forth herein.

167. Government restrictions that burden religion are subject to strict scrutiny when the restrictions simultaneously burden other constitutional rights. *Employment Div. v. Smith*, 494 U.S. 872, 881 (1990).

168. The state's policy impinges not only on the Blaises' and Class members' freedom of religion, but also on their rights to freedom of speech and their substantive due process right to have equal access to the right to foster and potentially adopt their own kin without having to accept the government's viewpoints on child rearing.

169. Because the government regulations at issue infringe multiple constitutional rights, strict scrutiny applies.

170. The Department lacks a compelling governmental interest in requiring the Blaises or other foster-care applicants to proactively affirm how they will respond to a hypothetical situation that may or may not happen sometime in the future.

1 171. To the extent the Department has a compelling governmental interest,
2 there are other ways it could meet that interest that are less restrictive to religion.

3 172. Absent declaratory and injunctive relief, the Blaises and Class
4 members have been, and will continue to be, irreparably harmed by the
5 Department's actions.

6 **COUNT VII**
7 **42 U.S.C. § 1983**
8 **VIOLATION OF THE FIRST AMENDMENT**
9 **TO THE U.S. CONSTITUTION**
10 **UNCONSTITUTIONAL CONDITIONS**

11 173. Plaintiffs reallege and incorporate by reference all the foregoing
12 paragraphs and all subparagraphs as if they were fully set forth herein.

13 174. In the same way that the Department generally cannot directly compel
14 speech or the free exercise of religion, it cannot do so indirectly through
15 conditioning a government benefit (here a license to foster). *Agency for Int'l Dev.*
16 *v. AOSI*, 570 U.S. 205, 214 (2013).

17 175. The ability of the Blaises and Class members to apply to the
18 government for a license that would allow them to serve as foster parents is a
19 valuable benefit.

20 176. That benefit cannot be conditioned on the Blaises or Class members
giving up constitutional rights.

177. The Department has conditioned the issuance of a license on the Blaises' and Class members' agreement to abandon rights under the First and Fourteenth Amendments.

178. For all the reasons above, the Department cannot condition a government benefit on unconstitutional actions without satisfying strict scrutiny.

PRAYER FOR RELIEF

Plaintiffs Gail and James Blais, individually and on behalf of all others similarly situated, request that the Court enter a judgment in their favor and against Defendant Hunter, Secretary of Washington State Department of Children, Youth and Families for the following:

1. Declaratory relief that the denial of the Blaises' and Class members' application to become licensed foster parents by Defendant and the Department based on the Blaises' and Class members' sincerely-held religious beliefs is unconstitutional;

2. Injunctive relief, requiring Defendant and the Department he oversees to grant the Blaises' foster parent application.

3. Injunctive relief, enjoining Defendant and the Department he oversees from enforcing or threatening to enforce Policy 6900 or any other Department policy, regulation or practice with regard to the Department's consideration of an

1 application to become licensed foster parents in a manner that conflicts with the
2 applicant's sincerely held religious beliefs concerning sexual orientation or gender
3 identity.

4 4. Reasonable attorneys' fees and costs of suit under 42 U.S.C. § 1988 or
5 such other authority as may authorize such an action; and

6 5. Such other and further relief as the Court deems just and proper.

7 RESPECTFULLY SUBMITTED this 9th day of December, 2020.

8 s/ Jerome R. Aiken

JEROME R. AIKEN, WSBA #14647

9 Attorneys for Plaintiffs

James Blais and Gail Blais

10 Meyer, Fluegge & Tenney, P.S.

Phone: 509/575-8500 – Fax: 509/575-4676

11 Email: aiken@mftlaw.com

12 s/ Todd R. McFarland

TODD R. McFARLAND

13 General Conference of Seventh-day Adventists

Attorneys for Plaintiffs

14 Phone: 301/680-6321; Fax: 301/680-6329

Email: McFarlandT@adventist.org

15 Admitted pro hac vice

16 s/ Andrew G. Schultz

ANDREW G. SCHULTZ, NM No. 3090

17 Rodey, Dickason, Sloan, Akin & Robb, P.A.

Attorneys for Plaintiffs

18 Phone: 505/765-5900; Fax: 505/768-7395

Email: aschultz@rodey.com

19 Admitted pro hac vice

20 **Second Amended Class Action Complaint for
Declaratory Relief and Preliminary and
Permanent Injunction - 42**

LAW OFFICES OF
MEYER, FLUEGGE & TENNEY, P.S.
230 South Second Street · P.O. Box 22680
Yakima, WA 98907-2680
Telephone (509) 575-8500

CERTIFICATE OF TRANSMITTAL

I hereby certify under penalty of perjury of the laws of the state of Washington that on December 9, 2020, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System which will automatically provide service on the below listed parties:

For Plaintiffs James and Gail Blais:

Mr. Todd R. McFarland, Associate General Counsel
General Conference of Seventh-Day Adventists
12501 Old Columbia Pike
Silver Spring, MD 20904
McFarlandT@adventist.org

 X via CM/ECF

Mr. Andrew G. Schultz
Rodey, Dickason, Sloan, Akin & Robb, P.A.
P.O. Box 1888
Albuquerque, NM 87103
aschultz@rodey.com

 X via CM/ECF

For Defendant Ross Hunter:

Mr. Jeffrey C. Grant, Assistant Attorney General
Office of the Attorney General
88 Fifth Avenue, Suite 2000
Seattle, WA 98104
Jeffrey.grant@atg.wa.gov

 X via CM/ECF

For Defendant Ross Hunter:

Mr. Daniel Judge, Senior Counsel
Mr. Drew Pugsley, Assistant Attorney General
Office of the Attorney General
7141 Cleanwater Drive SW / P.O. Box 40124
Olympia, WA 98504-0124
Daniel.Judge@atg.wa.gov / Drew.Pugsley@atg.wa.gov

 X via CM/ECF

**Second Amended Class Action Complaint for
Declaratory Relief and Preliminary and
Permanent Injunction - 43**

LAW OFFICES OF
MEYER, FLUEGGE & TENNEY, P.S.
230 South Second Street · P.O. Box 22680
Yakima, WA 98907-2680
Telephone (509) 575-8500

For Amicus Curiae Center for Children & Youth Justice:

Mr. Ryan C. Castle
 Castle Law Firm, PLLC
 1313 E. Maple Street, Suite 213
 Bellingham, WA 98225
ryan@ryancastlelawfirm.com

X via CM/ECF

For Amicus Curiae Center for Children & Youth Justice:

Mr. Daniel J. Shih
 Susman Godfrey L.L.P.
 1201 Third Avenue, Suite 3800
 Seattle, WA 98101-3000
dshih@susmangodfrey.com

X via CM/ECF

/s Sheryl A. Jones

SHERYL A. JONES, Legal Assistant
 Meyer, Fluegge & Tenney, P.S.
jones@mftlaw.com